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22 JAN 2007

SHERIDAN ROSS P.C.  
1560 BROADWAY  
SUITE 1200  
DENVER, CO 80202

In re Application of	:	
KELLER et al.	:	
Application No.: 10/575,019	:	
PCT No.: PCT/EP2004/011062	:	SUPPLEMENTAL
Int. Filing Date: 04 October 2004	:	
Priority Date: 06 October 2003	:	DECISION
Attorney's Docket No.: 2584SG-5	:	
For: FIRE PROTECTION GATE AND	:	
CORRELATED FIRE PROTECTION INSET	:	

A decision was mailed 06 December 2006 on applicants' petition filed 20 November 2006. However, the decision was returned to the USPTO as being undeliverable. A review of the correspondence address revealed that an incorrect correspondence address was used (1650 BROADWAY was used rather than 1560 BROADWAY). The decision is being re-mailed herewith by enclosing a copy of the original decision with this Supplemental Decision. The time limit set forth in the enclosed decision runs from the mailing date of this Supplemental Decision rather than the mailing date of the original decision.

Daniel Stemmer  
Legal Examiner  
PCT Legal Affairs  
Office of Patent Cooperation Treaty  
Legal Administration  
Telephone: (571) 272-3301  
Facsimile: (571) 273-0459



06 DEC 2006

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This decision is in response to applicants' "RENEWED PETITION UNDER 37 CFR 1.10(d)" filed on 20 November 2006.

### **BACKGROUND**

On 04 October 2004, applicants filed international application PCT/EP2004/011062, which designated the U.S. and claimed a priority date of 06 October 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 21 April 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 06 April 2006.

On 07 April 2006, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and an English translation of the international application.

On 08 June 2006, applicants filed a "REQUEST FOR CORRECTION OF NATIONAL PHASE FILING DATE", which was treated as a petition under 37 CFR 1.10(d).

On 25 August 2006, a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) was mailed indicating that the application was abandoned as to the United States of America for failure to pay the U.C. Basic National Fee within thirty months from the earliest priority date.

On 19 September 2006, a decision was mailed dismissing applicants' petition under 37 CFR 1.10(d) without prejudice. Specifically, it was noted that applicants had not made a satisfactory showing under 37 CFR 1.10(d)(3).

On 20 November 2006, applicants submitted the instant "RENEWED PETITION UNDER 37 CFR 1.10(d)".

### DISCUSSION

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 07 April 2006. The "Express Mail" label number EV788583237US is shown on the transmittal letter which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label accompanying the petition contains the same "Express Mail" label number.

The copy of the Finance Copy of Express Mail mailing label #EV788583237US shows a "Date In" of "4706".

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As noted in the decision mailed 19 September 2006, a satisfactory showing under 37 CFR 1.10(d)(1) and (2) has been provided.

As to item (3), a satisfactory showing has still not been provided. The declaration of Susan Willson and Exhibits A, B, and D-K have been considered but are not persuasive. Exhibit A is a copy of a letter from Susan Willson to a foreign associate confirming filing of documents with the USPTO. Exhibit B is a copy of a facsimile transmission report showing Exhibit A as having been transmitted on 07 April 2006 at 1:50 p.m. The declaration of Susan Willson states that it is her custom and practice to confirm filing of documents with the USPTO prior to delivering correspondence to the client or foreign associate. However, the declaration does not state how filing of the documents with the USPTO was confirmed. For example, was a log looked at to see what correspondence had been mailed? Or was confirmation based on something else, for example, a signed Certificate of Deposit with Express Mail? Clarification is

required. If confirmation was based on a log, then a copy of the log should be provided. The declaration of Susan Willson also states that after "receiving the Decision of the USPTO . . . , I reviewed the USPS Track and Confirm Search Results for such application and other applications deposited at the same time on April 6, 2006". Exhibits D-K show USPS Track and Confirm Search Results for various Express Mail mailing label numbers, including Express Mail mailing label #EV788583237US. The results for each Express Mail mailing label number show delivery to the USPTO on 10 April 2006 at 6:48 a.m. and that each item was signed for by an S DYAR. Again, however, the declaration does not state how these other applications and the Express Mail mailing label numbers that corresponded with these applications were obtained. Again, if a log was used, then a copy of the log should be provided.

The declaration of Eddie Abeyta filed 20 November 2006 has also been considered but is not persuasive. (The declaration refers to an earlier declaration of Eddie Abeyta of 08 August 2006. However, the only declarations of Eddie Abeyta in the application file are dated 06 June 2006 and 14 November 2006.) The declaration merely states the customary practice that Mr. Abeyta follows for depositing Express Mail. The declaration of Eddie Abeyta dated 06 June 2006 has been reconsidered. That declaration states that "I requested copies of the Express Mail receipts from the Post Office for all items sent on April 6 and 7, 2006". However, the declaration does not indicate how the request was made. For example, were receipts for particular Express Mail mailing label numbers requested? If so, how were these numbers obtained? Or did the request, for example, ask for all receipts from a particular sender having a date-in of April 6, 2006 or April 7, 2006? Clarification is required.

#### **CONCLUSION**

For the reasons set forth above, applicant's petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)." No additional petition fee is required.

The application remains abandoned as to the United States of America.

Applicants may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

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Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer

Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Legal Administration

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Facsimile: (571) 273-0459